

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

PINNACLE HOLDING COMPANY, LLC and
PINNACLE EMPLOYEE SERVICES, LLC,

Plaintiffs,

v.

MICHAEL ALLEN and PINNACLE EMPLOYEE
SERVICES, INC.,

Defendants.

DECLARATION

Civil Action No. 5:24-cv-239 (GTS/TWD)

ELIZABETH CONKLIN, under penalty of perjury and pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am the Marketing and Branding Manager for Pinnacle Holding Company, LLC (“PHC”) and Pinnacle Employee Services, LLC (“PES LLC”). I submit this declaration in support of the Plaintiffs’ motion for an order preliminarily enjoining the Defendants or those acting on their behalf from making defamatory and misleading statements about the Plaintiff.
2. As Marketing and Branding Manager, I have primary responsibility for managing PES LLC’s social media accounts, among other things. I have (or had) access to and control over PES LLC’s LinkedIn, Facebook and YouTube business accounts.
3. The evening of Monday, February 5, 2024, a video was posted on Defendant Pinnacle Employee Services, Inc.’s YouTube channel entitled “PSA - Beware of this IMPOSTER....” That video is generally available to the public and is accessible at <https://www.youtube.com/watch?v=dbiF0RVPeLQ>.

4. A screenshot of that video as uploaded onto PES Inc.’s YouTube channel is attached here as **Exhibit A**. I captured that screenshot on my work computer on February 6, 2024.

5. A copy of the full video, as uploaded onto PES Inc.’s YouTube channel, is provided on the CD attached here as **Exhibit B**.

6. The video was also posted twice on PES Inc.’s Facebook page, with a different caption each time. Screenshots of the posts of the video on PES Inc.’s Facebook, with the captions, are attached here as **Exhibit C**.

7. The same day, Michael Allen commented on one of PES LLC’s Facebook posts with the “PSA - Beware of this IMPOSTER...” video. A screenshot of that comment that I captured on my mobile phone that day is attached here as **Exhibit D**.

8. Michael Allen also commented on five of PES LLC’s LinkedIn posts with the “PSA – Beware of this IMPOSTER...” video. Screenshots of those comments that I captured on my computer the next morning, February 6, are attached here as **Exhibit E**.

9. PES Inc. shared the video on its LinkedIn Business page and tagged the PES LLC page in the post. A screenshot of the PES Inc.’s LinkedIn post is attached here as **Exhibit F**.

10. On the evening of Tuesday, February 6, 2024, PES Inc. commented on seven of PES LLC’s Facebook posts with the “PSA - Beware of this IMPOSTER...” video. Screenshots of the Facebook notification feed and PES Inc.’s comments under PES LLC’s posts that I captured on my mobile phone on Wednesday, February 7, 2024, are attached here as **Exhibit G**.

11. On Thursday, February 8, 2024 at 3:12 am, I received an email from YouTube notifying me that PES LLC’s YouTube channel has been removed due to violation of YouTube’s impersonation policy. The YouTube email is attached here as **Exhibit H**.

12. I submitted an appeal of that suspension to YouTube. A copy of the submitted YouTube appeal is attached as **Exhibit I**.

13. The same day, at 3:30 pm, I received an email from YouTube stating that our appeal was denied. Attached as **Exhibit J** is the YouTube appeal decision email.

14. The next day, Friday, February 9, 2024, I realized that PES LLC's Facebook page was deleted without any warning or explanation.

15. As with PES LLC's YouTube channel, I assumed Michael Allen or PES Inc. reported it as imposturous. The PES LLC's Facebook page cannot be searched or reached via any previous tagged posts. A screenshot of the Pinnacle Family of Companies' Facebook post from April 27, 2023 that I captured on my computer shows that PES LLC's Facebook page tag is removed and is attached here as **Exhibit K**.

16. On February 9, 2024, Michael Allen posted a video on PES Inc.'s YouTube channel entitled "My Response to NY PES Cease & Desists Letter – I'M NOT LEAVING!!". The video was Michael Allen's response to PES LLC's Cease & Desist letter. That video is generally available to the public and is accessible at

<https://www.youtube.com/watch?v=gbJGG69Sxu4>.

17. A copy of the video as it is uploaded onto PES Inc.'s YouTube channel is also provided on the CD as **Exhibit L**.

18. The video was posted on PES Inc.'s Facebook page with the caption, "My Response to NY PES Cease-and-Desists Letter. Please stop infringing on my trademark. I'M NOT LEAVING!!". A screenshot of the PES Inc.'s Facebook post, that I captured on my computer, is attached here as **Exhibit M**.

19. The Cease-and-Desist video was also shared on PES Inc.'s LinkedIn page and tagged PES LLC in the caption. Screenshots of the video posted on PES Inc.'s LinkedIn account and a notification that PES LLC got tagged in the post by PES Inc. that I captured on my computer are attached here as **Exhibit N**.

20. All of the above-mentioned comments made by Michael Allen and/or PES Inc. on PES LLC's LinkedIn account were reported as spam/harassment, and Michael Allen and PES Inc. have been blocked from posting on PES LLC's social media.

21. The videos posted to PES LLC's LinkedIn page by PES Inc. have been removed and they were also reported as spam/harassment.

22. Both videos are still live on PES Inc.'s Facebook and YouTube channel as they have not been removed despite being reported as spam/harassment.

23. The Pinnacle Family of Companies, including PES LLC, carefully cultivates a professional, consistent, and high-quality presence on the internet through its various websites and social media accounts.

24. In today's marketplace, particularly for those looking for services of the kind that the Pinnacle Family of Companies, including PES LLC provides, there is an expectation that companies of a high quality maintain and displace a robust, consistent and active social media presence.

25. PHC and PES LLC actively engage with customers and potential clients on their social media platforms. We invested significant time and resources into maintaining and promoting the Pinnacle brand on our websites and social media platforms.

26. As a marketing and branding professional, I understand and would expect that the loss of any social media account, or the publication of unprofessional, contentious or disparaging

statements or information on a companies' website or social media platforms would harm that companies' reputation.

27. Regardless of the intent, purpose, truth, or falsity of any disparaging or contentious comments or interactions published on or about a business' professional social media account, customers react negatively to such content.

28. Additionally, customers have come to expect a professional, reputable business to maintain accounts on major social media platforms such as Facebook and YouTube. The absence of PES LLC from Facebook, and the mere fact of the suspension/deletion of those accounts itself, is harmful to PES LLC's business, its reputation and could very well lead to missed business opportunities and clients.

29. An important purpose of PES LLC's social media approach is to engage with clients, customers, potential clients, business partners, employees, potential employees, and consumers in general. The loss of and interference with PES LLC's social media account has caused harm to PES LLC's reputation, brand and marketing efforts, among other things.

30. It is impossible to tell how many of PES LLC's customers, potential customers, or members of the public in general saw the Defendants' videos and comments. However, due to the number of viewers and followers of PES LLC's social media account. Mr. Allen's campaign of spreading the video and statements, and his maintenance of those statements on his own and PES Inc.'s social media pages, I believe that many people have viewed those statements.

31. It is also impossible to quantify the loss of reputation or goodwill that arose from Mr. Allen's statements about PES LLC, but I believe that his conduct has affected potential customers of PES LLC services and caused lost business opportunities.

32. As of today's date, PES LLC's LinkedIn account has 242 followers. That number was substantially the same last week when Mr. Allen posted the statements in question on PES LLC's LinkedIn account.

33. Based on a Google search, PES LLC's deleted Facebook page had seven 5-star reviews on the page. A screenshot of the Google search of PES LLC's Facebook page that I captured on my work computer on February 15, 2024, is attached as **Exhibit O**.

34. In May 2022, PES LLC had 144 followers on its Facebook page. A screenshot of the PES LLC Facebook ad showing the number of followers is attached as **Exhibit P**.

35. Using the Wayback Machine website, which archives web pages, I was able to access the main page of PES LLC's YouTube channel. Based on May 27, 2022, YouTube page analytics, PES LLC's account had approximately 8,500 video views. The screenshot of the main page of PES LLC's YouTube channel that I captured on my work computer on February 15, 2024, is attached as **Exhibit Q**.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: February 16, 2024

s/Elizabeth Conklin
ELIZABETH CONKLIN